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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,017	08/01/2006	Teiko Sutoh	30162/41537	4672
4743	7590	10/02/2008		
MARSHALL, GERSTEIN & BORUN LLP			EXAMINER	
233 S. WACKER DRIVE, SUITE 6300			MCKANE, ELIZABETH L	
SEARS TOWER				ART UNIT
CHICAGO, IL 60606				PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			10/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/551,017	SUTOH ET AL.	
	Examiner	Art Unit	
	ELIZABETH L. MCKANE	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>08012006, 09292005</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: ____ .

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel (WO 00/61200).

Patel teaches a plasma sterilization indicator including an adsorption indicator (page 9, lines 5-9) and an organic metal compound (page 12, lines 10-26). In use, an article is placed within a container to which is affixed the indicator. See page 3, lines 21-23 and lines 29-34; page 4, lines 33-34.

Claim Rejections - 35 USC § 103

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel.

Patel further discloses that the adsorption indicator may be hematoxylin (page 10, line 23), eriochrome black T (page 10, line 17), or pyridlazo naphthol (page 11, line 14) and that the organic metal compound may be an aluminum chelate compound (aluminum acetylacetone). See page 12, line 31. It is well-within the purview of one of ordinary skill in the art to choose from the indicators and activators disclosed by Patel to achieve the desired outcome, depending upon the chosen sterilant for the plasma, as well as the humidity, temperature, and time for sterilization.

6. Claims 4-7, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel in view of Chujo et al. (US 5,441,561).

While Patel teaches a plasma-sterilization indicator having an indicator and an organic metal compound, Patel is silent with respect to the incorporation of a polyvalent alcohol but does teach that 'alcohols' are suitable additives to aqueous ink compositions. See page 16, lines 1-2. Chujo et al. teaches that water-soluble organic solvents are well-known in aqueous ink compositions. Polyols such as ethylene-, diethylene-, polyethylene-, and propylene-glycol are the preferred organic solvents.

See col.3, lines 35-56. It would have been obvious to one of ordinary skill in the art to add a water-soluble polyol as the 'alcohol' of Patel, since Chujo et al. evidences their common use in ink compositions.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH L. MCKANE whose telephone number is (571)272-1275. The examiner can normally be reached on Mon-Fri; 5:30 a.m. - 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Application/Control Number: 10/551,017
Art Unit: 1797

Page 5

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/Elizabeth L McKane/
Primary Examiner, Art Unit 1797*

elm
28 September 2008